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11 **IN THE UNITED STATES BANKRUPTCY COURT**
12 **FOR THE DISTRICT OF ARIZONA**

13 In re:

14 **JASON DOMINIC LEVECKE and**
15 **ANDREA YVETTE LEVECKE,**

16 Debtors.

Chapter 7

2:16-bk-00639-DPC

17 **MOTION FOR APPROVAL OF**
18 **SETTLEMENT AGREEMENT**
19 **BETWEEN:**

- 20 (1) **AMSBERRY FAMILY TRUST;**
21 (2) **JASON AND ANDREA LEVECKE;**
22 (3) **JC 123 HOLDINGS, LLC; and**
23 (4) **MJC HOLDINGS 123, LLC**

24 **PURSUANT TO RULE 9019**

25 The Amsberry Family Trust (the "Trust"), hereby requests this Court to enter its
26 order pursuant to Rule 9019, *F.R. Bankr.R.* approving the Settlement and Release
27 Agreement attached hereto as Exhibit "A" (the "Settlement"). The Settlement is an
28 agreement pursuant to which following will occur, if the Settlement is approved by the
Court:

- 29 A. The Trust will release its claims against Jason and Andrea LeVecke all as set
30 forth in Adv. No. 2:16-ap-00210-DPC (the "Adversary") arising from, among
31 other things, fraud;
32 B. JC 123 Holdings, LLC ("JC 123") will release the Trust from any obligations
33 arising under a carry back note in the amount of \$216,000;

- 1 C. The Trust and MJC Holdings 123, LLC (“MJC”) will cancel the lease back
2 arrangement between them;
3 D. JC 123 will assign its rights to an underlying lease to the Trust; and
4 E. The purchase price for the Property that the Trust purchased from JC 123 shall
5 be deemed reduced by \$216,000.

6 In support of this motion, the Trust incorporates the following Memorandum of
7 Points and Authorities herein by this reference.

8 **DATED** this 19th day of January, 2017.

9 **RICHARDSON & RICHARDSON, P.C.**

10
11 By /s/ WRR 009278
12 William R. Richardson
13 1745 South Alma School Road
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. Statement of Factual Background giving rise to Settlement and the terms**
3 **of Settlement.**

4 1. JC123 is a limited liability company organized under the laws of Texas
5 whose address is, according the Secretary of State of the State of Texas, 5210 S. Priest
6 Dr. Ste. 3, Guadalupe, AZ 85283.

7 2. Jason LeVecke and his brother Carl LeVecke are the managers of JC123
8 according to the Articles of Organization filed August 10, 2007 with the Texas
9 Secretary of State's office.

10 3. JC123 was originally formed with the name of MJKL Enterprises Texas,
11 LLC and was, pursuant to Article III of the Articles of Organization, to "transact any
12 legal and lawful business."

13 4. On November 3, 2009, the Articles of Organization were amended to
14 specifically amend Article III to read as follows:

15 The purpose of MJKL Enterprises Texas,
16 LLC is limited exclusively to the development
17 and operation of Carl's Junior restaurants and
18 other restaurants operated by MJKL
19 Enterprises Texas, LLC and franchised by
20 Carl Karcher Enterprises, Inc.

21 5. Carl Karcher Enterprises, Inc., through its subsidiaries, owns, operates, and
22 franchises a chain of quick-service fast-food restaurants in the United States and
23 internationally.

24 6. Carl Karcher Enterprises, Inc. operates as a subsidiary of CKE Restaurants,
25 Inc.

26 7. Carl Karcher Enterprises, Inc. and CKE Restaurants, Inc. are businesses that
27 were formed, controlled and operated by restaurant magnate Carl Karcher.

28 8. Upon information and belief, Jason LeVecke and Carl LeVecke are Carl
Karcher's grandsons.

1 9. Jason and Carl and their wives owned or controlled a number of entities
2 which in turn, owned or operated at least 170 Hardee's or Carl's Jr. restaurants in
3 various locations throughout the United States including Arizona, Texas, Illinois,
4 Missouri, Kentucky and Tennessee.

5 10. Among many other entities, Jason Leveck is the managing member of MJC
6 whose address is listed in the office of the Arizona Corporation Commission as 5210
7 S. Priest Dr. Ste. 3, Guadalupe, AZ 85283.

8 11. JC123 and MJC are nominally owned by Carl and Jason LeVecke and their
9 wives and therefore, the trustees in the cases now pending for the two couples may
10 claim some rights or interests in the two entities.

11 12. Jason LeVecke is also the managing member of Frontier Star 1, LLC, a
12 Delaware limited liability company ("Frontier"), whose address is listed in the office
13 of the Arizona Corporation Commission as 5210 S. Priest Dr. Ste. 3, Guadalupe, AZ
14 85283.

15 13. Frontier is now the subject of bankruptcy proceedings in the United States
16 Bankruptcy Court for the District of Arizona (Case #2:15-bk-14679-DPB)(Chapter 11).

17 14. Jason and Andrea LeVecke represented to the Trust that they had great
18 holdings of immense value together with wide ranging and substantial business
19 interests in the restaurant industry throughout the United States.

20 15. Among other things, Jason LeVecke represented that he and his company
21 Frontier, had both great worth and financial stability that would guarantee that the
22 transaction that he, Jason LeVecke, ultimately proposed, would be financially sound
23 and would have essentially no risk to the Trust.

24 16. These representations were false and were, among other disclosures and
25 representations, the predicate for the Trust's willingness to enter into any financial
26 dealings with JC 123, MJC or Jason and Andrea LeVecke.

27 17. For example, Frontier has claims filed under oath against it in the amount
28 of not less than \$41,647,905.81.

1 18. Many of the over 40 claims that have been filed against Frontier were
2 guaranteed by Jason and Andrea LeVecke.

3 19. Jason and Andrea LeVecke have claims filed under oath against them in
4 their administrative case amount of not less than \$16,681,813.32.

5 20. Among other written representations that Jason and Andrea LeVecke
6 provided to the Trust, on or about February 20, 2015, they provided a financial
7 statement dated January 1, 2015 (the "Financial Statement").

8 21. The Financial Statement was materially false in that, among other things,
9 Jason and Andrea LeVecke represented that they owned not less than \$1,675,000.00
10 in real estate and that they owned member/partner interests with a value of not less
11 than \$72,600,000.00.

12 22. The Financial Statement was false in that it also failed to list numerous
13 contingent liabilities, some of which are mentioned above.

14 23. Such representations were false, in that Jason and Andrea LeVecke, along
15 with Frontier, among others, were entering into a large number of transactions pursuant
16 to which the LeVeckes and their companies were executing lease guarantees which
17 could not be complied with due to the LeVeckes' and their companies' poor financial
18 condition, all as reflected in, among other lawsuits, *Remur, LLC v. LeVecke et al.*, case
19 no. 2:15-cv-02180-JJT now pending in the United States District Court for the District
20 of Arizona and *KMK Group, LLC et al. v. LeVecke et al.*, case no. 1:15-cv-08140 now
21 pending in the United States District Court for the Northern District of Illinois, Eastern
22 Division.

23 24. In connection with the transaction at issue in the Adversary, Jason LeVecke
24 represented to the Trust that he had property to sell located at 116 N. Larkin St. in
25 Joliet, Illinois (the "Property").

26 25. In reality, neither Jason LeVecke nor JC 123 owned the Property.

27 26. The Property, unbeknownst to the Trust, was owned by an entity by the
28 name of CJS Joliet Larkin Ave, LLC, a Delaware limited liability company ("CJS").

1 27. Jason LeVecke proposed an arrangement whereby he or one of his
2 companies, would sell the Property to the Trust for \$1.6 million and would lease back
3 the property from the Trust at a rate that would not only provide substantial income to
4 the Trust, but would more than offset any amounts the Trust would owe under the
5 terms of a carry back note.

6 28. Jason provided to the Trust, information, including financial projections,
7 that purported to reflect not only that the lease back arrangement would provide the
8 funds with which to pay the a portion of the purchase price, but would result in
9 substantial profits to the Trust.

10 29. As part of the purchase transaction, and on the strength of Jason LeVecke's
11 representations, on or about May 12, 2015, the Trust paid the purchase price by
12 executing a promissory note in the amount of \$216,000 (the "Note") and by paying the
13 balance of the purchase price in cash (approximately \$1,384,000).

14 30. The Note provided for payment of monthly interest payments of \$1,350 over
15 the course of a year with a maturity date of May 12, 2016.

16 31. In connection with JC 123's purchase of the Property from CJS for
17 \$1,000,000, JC 123 simultaneously transferred the Property to the Trust and pocketed
18 approximately \$400,000 in cash.

19 32. The "flip" nature of the transaction was hidden from the Trust.

20 33. As part of the purchase transaction, Jason LeVecke had his company MJC,
21 enter into a bogus twenty year lease dated May 12, 2015, which required monthly lease
22 payments commencing at \$10,000 for the first five years, with increasing payments up
23 to \$11,576.25 for the last five years of the lease term (the "Apex Lease").

24 34. Jason and Andrea LeVecke, together with Frontier, executed a guaranty of
25 the Apex Lease pursuant to a document entitled Personal Guaranty of Lease dated May
26 12, 2015 (the "Guaranty").
27
28

1 35. MJC paid only two lease payments under the Apex Lease before defaulting
2 and both of those payments were less than the amount required under the terms of the
3 Lease (\$8,650 each).

4 36. Neither Jason and Andrea LeVecke nor Frontier have made payments under
5 the Guaranty despite demands that they do so.

6 37. Similarly, in dozens of other similarly structured transactions, Jason and
7 Andrea LeVecke, through entities that they owned or controlled, made only one or two
8 payments on the lease back leases and then failed or refused to continue to make
9 payments despite their having reaped millions of dollars from unsuspecting buyers
10 through similar undisclosed “flip” transactions.

11 38. On April 29, 2016, the Trust filed the above referenced Adversary.

12 39. In its adversary complaint, the Trust stated claims against the Debtors for fraud,
13 fraudulent schemes, and intentional act/scheme or artifice to defraud.

14 THE SETTLEMENT

15 The Parties have entered into the Settlement which essentially provides as follows:

16 40. Under the terms of the Settlement agreement, the following material terms will
17 apply to MJC, JC 123, the LeVeckes and the Trust (collectively the “Parties”):

18 A. Upon Bankruptcy Court approval of the Parties’ Settlement, JC123 will assign
19 to the Trust any and all rights it has to the Apex Lease.

20 B. Upon Bankruptcy Court approval of the Parties’ Settlement, the Lease between
21 the Trust and MJC shall be of no further force and effect as between the Parties,
22 provided however, that this provision shall not affect the Trust’s claims against
23 Frontier.

24 C. Upon Bankruptcy Court approval of the Parties’ Settlement, the Parties will
25 adjust the purchase price of the Property by \$216,000. The adjustment will be
26 effectuated by voiding the Note. To the extent that the original Note can be
27 located, the LeVeckes and JC123 shall will immediately supply to counsel for
28 the Trust, the original Note with a notation thereon to the effect that the Note

1 is "VOID" such that the Note is non-negotiable and of no further force and
2 effect. The LeVeckes and JC123 will make reasonable efforts to locate the
3 Note.

4 D. Upon Bankruptcy Court approval of the Parties' Settlement, the Trust and the
5 LeVeckes will agree to dismiss the Adversary with each party to bear their
6 respective costs and fees.

7 E. Upon Bankruptcy Court approval of the Parties' Settlement, the Parties shall be
8 deemed to have released each other from any and all claims¹ arising between
9 them.

10 **THE PARTIES**

11 41. The parties involved in this Settlement do not only include the parties to the
12 Adversary, but also include JC123 and MJC.

13 42. As noted above, these two entities are nominally owned by Carl and Jason
14 LeVecke and their wives.²

15 43. As the LeVeckes are the subject of separate Chapter 7 proceedings, their
16 respective Chapter 7 trustees may claim some interest in JC123 and / or MJC.

17 44. Jason LeVecke is a 50% owner of JC123.

18 45. Jason LeVecke is a 38% owner of MJC.

19 46. Under the terms of an Operating Agreement dated January 1, 2011 (the
20 "Operating Agreement," the managers and members of JC123 have certain rights and
21 responsibilities.

22 47. Under ¶ 3.6 of the Operating Agreement, among other obligations, the
23 members of JC123 have an obligation to refund distributions.

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26 ¹ "Any and all claims" is a defined term in the Parties' agreement and in essence will result in
27 a full and complete release for all potential, known or unknown claims that may exist or arise
between the Parties.

28 ² A sister apparently owns 24% of MJC according to Jason LeVecke's schedules.

1 48. Where there are “material obligations owing to the company,” an operating
2 agreement is an executory contract which must be assumed by the trustee. *Movitz v.*
3 *Fiesta Inv., LLC (In re Ehmann)*, 319 B.R. 200, 204 (Bankr. D. Ariz. 2005).

4 49. There is no evidence that the trustees in either the Carl LeVecke or the Jason
5 LeVecke individual Chapter 7 cases timely assumed the operating agreement for
6 JC123.

7 50. “[E]xecutory contracts —unlike all other assets—do not vest in the trustee as
8 of the date of the filing of the bankruptcy petition. They vest only upon the trustee's timely
9 and affirmative act of assumption.” *See Fursman v. Ulrich (In re First Protection, Inc.)*,
10 440 B.R. 821, 831 (B.A.P. 9th Cir. 2010).

11 51. Thus, the Operating Agreement is deemed rejected. *Id.*(trustee does not
12 retain right as manager of rejected operating agreement).

13 52. Thus, Jason LeVecke ostensibly retains his right to manage the affairs of
14 JC123 and therefore is entitled to settle with the Trust.

15 53. Pursuant to the lease between the Trust and MJC, the lease is terminable at
16 any time as a result of MJC’s failure to pay rent.

17 54. Thus, the termination of the MJC Lease pursuant to the Parties’ Agreement
18 as set forth herein, is indubitable and not subject to objection.

19 55. Moreover, since the \$216,000 note was executed predicated upon the false
20 representations and fraudulent inducement of, among others, Jason LeVecke
21 individually and as manager of JC123, the Trust has a complete defense to the
22 enforcement of the Note even if JC123 were to attempt to enforce the subject Note
23 through one or both of the LeVecke trustees.

24 APPLICABLE LAW

25 In considering the propriety of the proposed Settlement, the Court and interested
26 parties should consider *Woodson v. Fireman’s Fund Insurance Co. (In re Woodson)*, 839
27 F.2d 610 (9th Cir. 1988). In that case, the court considered the Bankruptcy Court’s
28 duties and obligations with respect to approval of compromises under Bankruptcy Rule

1 9019. Accordingly, the court may approve a compromise as long as it is fair and
2 equitable. In making that determination, the court must consider the following factors:

- 3 (1) The probability of success in the litigation;
- 4 (2) The difficulties, if any, to be encountered in
5 the matter of collection;
- 6 (3) The complexity of the litigation involved, and
7 the expense, inconvenience and delay
8 necessarily involved in continuing the
9 litigation;
- 10 (4) The paramount interest of the creditors and a
11 proper deference to their reasonable views in
12 the premises.

13 *Id.* at 620. *See also, Martin v. Kane (In re A.C. Properties)*, 784 F.2d 1377, 1380-81 (9th
14 Cir.), *cert. denied sub nom. Martin v. Robinson*, 107 S. Ct. 189 (1986). In this case, an
15 analysis of the four factors set forth in the *Woodson* case, supports this court's
16 approval of the compromise set forth in the Settlement all as more fully discussed below.

17 **PROBABILITY OF SUCCESS**

18 The likelihood of success in this case is not terribly in doubt based upon, among
19 other things, the facial falsity of the financial statement that Jason LeVecke provided to the
20 Trust. The Trust believes that settlement is advisable at this point because of the number
21 of complaints³ that have been filed against Jason and Andrea LeVecke, the judgements that
22 have been entered as a result of those complaints, and the apparent paucity of future funds
23 with which to pay any judgment in favor of the Trust. Moreover, the Trust believes that the
24 Settlement set forth in the Parties' agreement will have essentially no impact on the Chapter
25 7 estates of either Jason or Carl LeVecke. Moreover, even if the respective trustees were
26 to attempt to assume the management rights of JC123 and / or MJC, any attempt to assert
27 claims against the Trust would be easily defended. Accordingly, the Trust believes it is in
28 the best interests of the Chapter 7 estates to settle this matter in accordance with the terms
of the Settlement.

³ These are exception to discharge complaints under §523.

1 **COLLECTION**

2 As noted, the Trust believes that there is little if any likelihood of collecting against
3 the LeVeckes.

4 **COMPLEXITY OF CASE**

5 It is anticipated that liquidating this matter would consume a substantial period of
6 time with further delay and expense to both the Trust and to the Debtors. Accordingly, the
7 Parties believe that approval of the Settlement is is prudent and appropriate.

8 **INTEREST OF CREDITORS**

9 As with all compromises, the Parties recognize the benefits of a settlement in terms
10 of certainty and a savings of litigation expenses. In this case, the major benefit will be a
11 savings of costs and expenses and the avoidance of unnecessary litigation. Moreover, the
12 Settlement lends certainty where JC123 and MJC are concerned. There appears to be no
13 benefit, yet no material detriment to the Chapter 7 estates of either Jason or Carl LeVecke.

14 Thus, based upon the foregoing, the Trust believes that it is in the best interest of
15 both creditors and the estate to compromise this matter in the manner set forth in the
16 Settlement. Accordingly, the Trust requests that this Court approve the Settlement and that
17 the Court incorporate the terms thereof in the order of the Court approving the Settlement.

18 **DATED** this 19th day of January, 2017.

19 **RICHARDSON & RICHARDSON, P.C.**

20 By /s/ WRR 009278
21 William R. Richardson
22 1745 South Alma School Road
23 Corporate Center • Suite 100
Mesa, Arizona 85210-3010
Attorneys for Amsberry Family Trust

24 **ORIGINAL** of the foregoing electronically
25 filed this 19th day of January, 2017 and a
26 **COPY** mailed/emailed this same date to:

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EXHIBIT “A”

SETTLEMENT AND RELEASE AGREEMENT

The Amsberry Family Trust, a California Living Trust (“Amsberry”) and Jason Dominic LeVecke and Andrea Yvette LeVecke (collectively the “LeVeckes”) (Amsberry and the LeVeckes are hereinafter referred to as the “Principal Parties”) together with JC123 Holdings, LLC, a Texas limited liability company (“JC123”) and MJC Holdings 123, LLC a Delaware limited liability company (“MJC”) (Amsberry, the LeVeckes, JC123 and MJC are collectively hereinafter referred to as the “Parties”) enter into this Settlement Release Agreement this 9th day of December, 2016 for the purposes of fully resolving any and all claims between the Parties to this Agreement and state as follows:

RECITALS:

- A. Amsberry is a California Living Trust, the Trustee of which is James N. Amsberry who is a resident of Fullerton, Orange County, California.
- B. The LeVeckes are residents of Phoenix, Maricopa County, Arizona and are Debtors in the Chapter 7 case now pending in the United States Bankruptcy Court for the District of Arizona (the “Bankruptcy Court”), Case No. 2:16-bk-00639-DPC.
- C. The LeVeckes are husband and wife.
- D. The Principal Parties are involved in an adversary proceeding now pending in the Bankruptcy Court Adv. No. 2:16-ap-00210-DPC (the “Litigation”).
- E. In the Litigation, Amsberry has alleged, among other things, that the LeVeckes individually or collectively, committed certain acts, which if proved, would potentially result in the exception of Amsberry’s claims against the LeVeckes from discharge.
- F. In the Litigation, the LeVeckes have denied committing any acts which would result in an exception from discharge.

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G. JC123 is a limited liability company organized under the laws of Texas whose address is, according the Secretary of State of the State of Texas, 5210 S. Priest Dr. Ste. 3, Guadalupe, AZ 85283.

H. Jason LeVecke and his brother Carl LeVecke are the managers of JC123.

I. MJC is a Delaware limited liability company whose address is listed in the office of the Arizona Corporation Commission as 5210 S. Priest Dr. Ste. 3, Guadalupe, AZ 85283.

J. Jason LeVecke is the managing member of MJC.

K. Jason LeVecke is also the managing member of Frontier Star 1, LLC, a Delaware limited liability company ("Frontier"), whose address is listed in the office of the Arizona Corporation Commission as 5210 S. Priest Dr. Ste. 3, Guadalupe, AZ 85283.

L. On July 27, 2015, two entities owned or controlled by the Defendants, filed Chapter 11 bankruptcy in the Bankruptcy Court, including: Frontier Star, LLC (Case #2:15-bk-09383-EPB) and Frontier Star, CJ, LLC (Case #2:15-bk-09385-EPB).

M. On November 17, 2015, Frontier filed Chapter 11 bankruptcy in the Bankruptcy Court (Case #2:15-bk-14679-DPC), which was consolidated with the other two bankruptcy cases.

N. Jason LeVecke individually, or through his authorized agent, Alliance Investment Real Estate Group, represented to Amsberry that JC123 had property to sell which property was located at 116 N. Larkin St. in Joliet, Illinois (the "Property").

O. Jason LeVecke proposed an arrangement whereby JC123 would sell the Property to Plaintiff for \$1.6 million and would lease back the property from Plaintiff (through another entity) at a monthly rental amount.

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File No. 1137.01

P. Under the arrangement described above, MJC was to be the lessee and signed a twenty year lease dated May 12, 2015 with Amsberry, as lessor, for the Property (the "Lease").

Q. The Lease provided that MJC would pay rental payments to Amsberry ranging from an initial payment of \$10,000 per month, to \$11,576.25 per month.

R. The Property was already the subject of a lease dated March 19, 2012 between KFC Corporation, a Delaware corporation and Apex Brands Chicago, LLC ("Apex"), an Illinois limited liability company (the "Apex Lease").

S. The Apex lease has been assigned to subsequent lessees and has been assigned to subsequent lessors.

T. Under the terms of the Lease between the Principal Parties, the Apex Lease was to become subordinate to the Lease and thus, Apex or its successor would become a sublessee of the Property.

U. On or about May 12, 2015, Amsberry paid the purchase price by executing a promissory note in the amount of \$216,000 (the "Note") to JC123 and by paying the balance of the purchase price for the Property in cash.

V. The LeVeckes executed a document entitled "Personal Guaranty of Lease" dated May 12, 2015, pursuant to which the LeVeckes guaranteed full performance under the Lease (the "Guaranty").

W. MJC paid two payments under the lease which reflected a deduction for the amounts due to JC123 from Amsberry under the Note.

X. MJC thereafter failed to make any payments under the Lease.

Y. LeVeckes have likewise failed to make any payments under the terms of the Guaranty.

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Z. The Parties now desire to forever and unconditionally resolve, release and discharge any and all claims existing among the Parties to this Agreement.

A G R E E M E N T:

NOW THEREFORE, in consideration of the mutual promises, covenants, conditions and restrictions contained herein the Parties agree as follows:

26. Upon Bankruptcy Court approval¹ of this Agreement, JC123 will assign to Amsberry any and all rights it has to the lease dated March 19, 2012 between KFC Corporation and Apex Brands Chicago, LLC.

27. Upon Bankruptcy Court approval of this Agreement, the Lease between Amsberry and MJC shall be of no further force and effect as between the Parties provided however, that this provision shall not affect Amsberry's claims against Frontier Star 1, LLC.

28. Upon Bankruptcy Court approval of this Agreement, the parties agree to adjust the purchase price of the Property by \$216,000. The adjustment will be effectuated by voiding the Note. To the extent that the original Note can be located, the LeVeckes and JC123 will immediately supply to counsel for Amsberry the original Note with a notation thereon to the effect that the Note is "VOID" such that the Note is non-negotiable and of no further force and effect. The LeVeckes and JC123 will make reasonable efforts to locate the Note.

1 As used herein, "Bankruptcy Court approval" shall mean that the Bankruptcy Court in both the LeVecke's Chapter 7 bankruptcy case and, also in the Carl and Neisha LeVecke Chapter 7 case (case no. 2:16-bk-00640-PS) shall have finally approved this Agreement after notice to creditors and all interested parties in both Chapter 7 cases.

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29. Upon Bankruptcy Court approval of this Agreement, Amsberry will withdraw his non-dischargeability claims against Jason LeVecke and Andrea LeVecke in the Litigation.

30. Amsberry warrants and represents that James Amsberry is vested with full authority under the laws of the State of California to act for and on behalf of Amsberry.

31. Amsberry further warrants and represents that there are no legal or other restrictions which would adversely impact Mr. Amsberry's authority to execute this Agreement and thereby bind Amsberry to the terms of this Agreement.

32. Jason LeVecke hereby warrants and represents that he is vested with full authority to execute this Agreement for and on behalf of himself individually.

33. Andrea LeVecke hereby warrants and represents that she is vested with full authority to execute this Agreement for and on behalf of herself individually.

34. Jason LeVecke hereby warrants and represents that he is currently the managing member of JC123 and MJC and vested with full authority to execute this Agreement for and on behalf of JC123 and MJC.

35. Except as provided herein below, the Parties hereto make no warranties or representations as the claims to be released, or any other consideration given in connection with this Agreement.

36. Rather, the Parties hereto have made their independent analyses as the value of the consideration paid or received or to be paid or received in connection with this Agreement and all Parties hereto have satisfied themselves as to the value thereof.

37. Subject to Bankruptcy Court approval of this Agreement, Amsberry forever unconditionally releases and waives any and all claims Amsberry may have against the LeVeckes, MJC or JC123.

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38. Subject to Bankruptcy Court approval of this Agreement, MJC, JC123 and the LeVeckes hereby forever unconditionally release and waive any and all claims they may have against Amsberry.

39. As utilized in the foregoing paragraphs, the terms "any and all claims" shall apply to and include any and all existing and future damages and claims which are known and which are not now known to the Parties but which may later develop or be discovered, including the effects or consequences thereof, and includes all claims, demands, causes or rights of action, liabilities, or obligations of any kind, type, or nature which exist as of the date of this Agreement or which might otherwise exist but for the occurrence of a condition precedent to the accrual of such claims, rights of action, liabilities or obligations. Notwithstanding the terms contained in this paragraph or any other term of this Agreement, the releases contained herein shall not operate to release or absolve any Party hereto from any claim or duty arising from this Agreement or a breach thereof.

40. The releases set forth herein shall apply to the Parties being released and their respective partners, officers, directors, agents, employees, managers, attorneys, accountants, heirs, executors, administrators, personal representatives, successors, beneficiaries, and assigns and the respective former and/or present spouses of all such persons. All of the foregoing persons shall be specifically deemed to be third party beneficiaries of this Agreement.

41. Immediately upon the execution of this Agreement:

A. Amsberry will submit to the Bankruptcy Court a motion under Bankruptcy Rule 9019 to which this Agreement will be attached seeking court approval of this Agreement, with notice to all creditors and interested parties in (1) the Carl LeVecke individual Chapter 7 bankruptcy case (case

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no. 2:16-bk-00640-PS), (2) the LeVeckes' individual Chapter 7 bankruptcy case and to the respective Chapter 7 trustees and their attorneys in each such case;

B. The Parties will execute a stipulation providing for the dismissal of the Litigation which shall be lodged into the Bankruptcy Court and which shall be effective only upon final Bankruptcy Court approval of this Agreement; and

C. The Parties will take such other and further actions as may be necessary to fully absolve the Parties hereto from any and all claims and shall further stay any proceedings in the Litigation pending Bankruptcy Court approval or rejection of this Agreement.

42. The Parties hereto acknowledge and agree that they have undertaken their own independent investigation as to the material facts, allegations, claims and liabilities being asserted or released in connection with this Agreement and that they are not relying upon the representations of any Party hereto or their agents, attorneys, employers or anyone acting on their behalf.

43. This Agreement and the validity thereof is subject to Bankruptcy Court approval and shall be deemed void in the event the Bankruptcy Court fails or refuses to approve this Agreement and the Bankruptcy Rule 9019 motion that Amsberry is to file with the Bankruptcy Court in both Chapter 7 cases.

44. The Parties stipulate and agree that they shall take no action which may result in the assertion of a tax claim against any other party arising from any alleged forgiveness of debt. Rather, the Parties hereto stipulate and agree that the settlement and release provided for under the terms of this Agreement constitute (1) a recalculation and

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redetermination, based on subsequently discovered facts, of the true value of the consideration paid or to be paid under the terms of the Note and related agreements and (2) the settlement of disputed claims between the Parties.

45. This Agreement constitutes a settlement document and shall not constitute an admission of fact by any party hereto and shall not be admissible in any proceeding for purposes of proving the validity or the invalidity of any of the claims or defenses relating to the subject matter of this Agreement, except in a proceeding commenced to enforce the rights arising under the terms of this Agreement as a result of any alleged breach of this Agreement.

46. All duties and obligations imposed on the Parties shall be performed within the latter of ten days after (1) the execution of this Agreement by all Parties or (2) approval of this Agreement by the Bankruptcy Court.

47. The Parties shall pay their own costs, expenses and attorneys' fees incurred in connection with all proceedings pertaining to the subject matter of this Agreement or to be incurred in connection with the Litigation or the documentation, noticing and execution of this Agreement.

48. If any of the Parties are required to utilize the services of an attorney to enforce the provisions of this Agreement, the prevailing party shall be awarded its reasonable costs and attorneys' fees in connection with any such enforcement action. Costs and attorneys' fees shall be determined by the court and not by a jury. The right to recover attorneys' fees and costs extends to any and all proceedings undertaken to enforce this Agreement including, but not limited to (1) civil litigation in any state or federal tribunal, (2) arbitration proceedings and/or (3) bankruptcy proceedings.

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49. Without increasing their respective obligations hereunder, the Parties to this Agreement hereby agree and assure each other that they will do such acts and execute all such documents, if any, as may be necessary or appropriate to implement this Agreement in accordance with its terms, including, but not limited to, recording documents, submitting stipulations, obtaining Bankruptcy Court approval of stipulations or orders and the like.

50. This Agreement shall bind the Parties hereto, and all of their respective heirs, assigns, successors, representatives, and trustees.

51. The Parties hereto acknowledge and represent that they have received any and all consideration to which they are entitled in good funds and that no additional consideration is expected or shall be forthcoming from any other party except as to the Parties' continuing duties and obligations arising under this Agreement.

52. The Parties acknowledge and agree that this Agreement was the product of a joint drafting effort by their attorneys and in the event of a dispute as to its interpretation, no ambiguity shall be construed for or against any party. Rather, it is the Parties' intent that the court shall construe this Agreement fairly and in a manner that gives full effect to its purpose and intent.

53. This Agreement contains a full integration of the Parties' agreement and no prior representations, warranties or other agreement shall bind the Parties hereto.

54. The Parties to this Agreement have consulted with and have been advised by counsel of their choice and have entered into this Agreement of their own free will, being fully knowledgeable as to the contents, impact and the operation hereof.

55. Time is of the essence of this Agreement and each and every term hereof.

56. This Agreement may be executed in several counterparts and all such executed counterparts shall constitute but one agreement, binding upon all the Parties

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hereto notwithstanding that all Parties are not signatories to the original or the same counterpart.

57. The Parties hereby warrant and represent as to each Party, individually, that the execution of this Agreement does not violate the terms of any other agreement between such party and any other third party.

58. The warranties and representations contained herein shall survive the execution of this Agreement and the closing of the transaction contemplated hereby.

59. All notices and other documents which must be sent, served or provided pursuant to this agreement shall be sent to the following persons at the following addresses:

If to Amsberry:	James Amsberry, Trustee Amsberry Family Trust 829 Grandview Avenue Fullerton, CA 92832
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with a copy to:	William R. Richardson Richardson & Richardson, P.C. 1745 S. Alma School Road, Suite 100 Mesa, AZ 85210
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Jason and Andrea Leveck	Jason and Andrea LeVecke 4473 S. Basha Road Chandler, Arizona 85248
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with a copy to:	Todd Feltus Julia A. Wagner KERCSMAR & FELTUS, PLLC 7150 East Camelback Road, Suite 285 Scottsdale, AZ 85251
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JC123	Attn: Jason LeVecke, managing member 4473 S. Basha Road Chandler, Arizona 85248
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MJC

Attn: Jason LeVecke, managing member
4473 S. Basha Road
Chandler, Arizona 85248

Any such documents or notices shall be mailed to the addresses stated above, via certified mail, return receipt requested, and shall be deemed received three calendar days after mailing. Such notices shall also be simultaneously emailed to the opposing Parties at an email address separately supplied to counsel for the Principal Parties. Any Party to this Agreement who wishes to receive notification at any other address shall so advise the other Parties to this Agreement by mailing or emailing notice thereof to the addresses and in the manner set forth above. Thereafter, notices to such Party shall be mailed and/or emailed to the new addresses so specified.

60. The waiver of any terms of this Agreement by any Party hereto shall not constitute a continuing waiver of any such term and any and all such terms shall be complied with thereafter notwithstanding any alleged waiver.

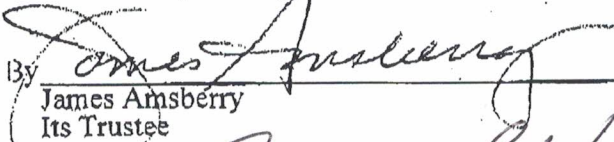
61. This Agreement cannot be modified except pursuant to a written modification executed by all Parties hereto.

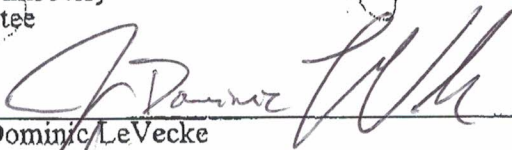
62. This Agreement shall be construed and interpreted in accordance with the applicable laws of the United States of America and, in particular, the State of Arizona provided however that the choice of law provisions of the State of Arizona shall not operate to modify this provision or result in the application of the law of any other state except the State of Arizona.

63. Any proceeding to enforce the terms of this Agreement shall be commenced and shall be determined in a court of competent jurisdiction in Maricopa County, Arizona.

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The Amsberry Family Trust

By  Dated: 2-12-87 (R-7-11-87)
James Amsberry
Its Trustee

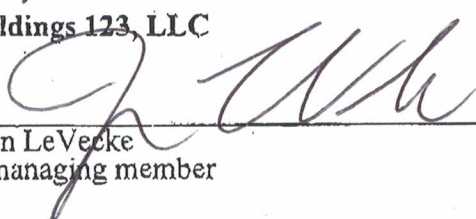
 Dated: 1-2-17
Jason Dominic LeVecke

 Dated: 1-2-17
Andrea Yvette LeVecke

JC123 Holdings, LLC

By  Dated: 1-2-17
Jason LeVecke
Its managing member

MJC Holdings 123, LLC

By  Dated: 1-2-17
Jason LeVecke
Its managing member

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STATE OF CALIFORNIA

County of Orange

} ss.

The foregoing instrument was acknowledged before me this 12 day of December, 2016, by James Amsberry, the Trustee of the Amsberry Family Trust, on behalf of such trust with authority to do so.


Notary Public

My commission expires:

Feb. 02, 2018



STATE OF ARIZONA

County of Maricopa

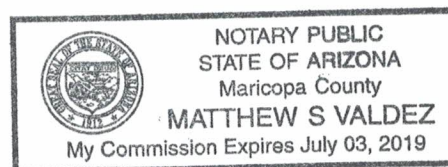
} ss.

The foregoing instrument was acknowledged before me this 2 day of JANUARY, ~~2016~~, by Jason Dominic LeVecke.
2017


Notary Public

My commission expires:

07/03/2019

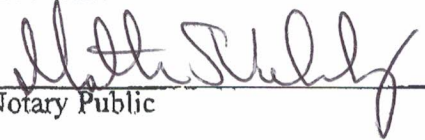


STATE OF ARIZONA

County of Maricopa

} ss.

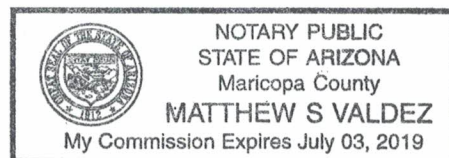
The foregoing instrument was acknowledged before me this 2 day of JANUARY, ~~2016~~, by Andrea Yvette LeVecke.
2017


Notary Public

My commission expires:

07/03/2019

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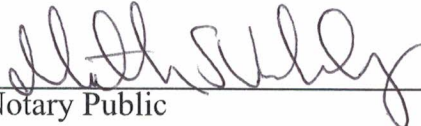


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file No. 1137.01

STATE OF ARIZONA)
) ss.
County of Maricopa)

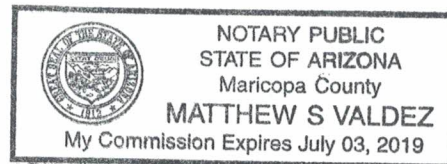
The foregoing instrument was acknowledged before me this 2 day of ~~JANUARY 2016~~, 2016, by Jason D. LeVecke as managing member for JCI23 Holdings, LLC, a Texas limited liability company, with authority to do so.



Notary Public


My commission expires:

07/03/2019



STATE OF ARIZONA)
) ss.
County of Maricopa)

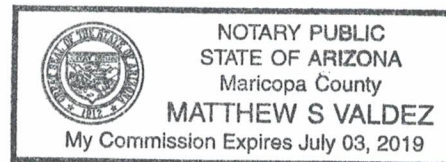
The foregoing instrument was acknowledged before me this 2 day of ~~JANUARY 2017~~, 2016, by Jason D. LeVecke as managing member for MJC Holdings 123, LLC, a Delaware limited liability company, with authority to do so.



Notary Public

My commission expires:

07/03/2019



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